

SERVICE DATE - SEPTEMBER 4, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 158X)¹

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—
IN MCPHERSON, ELLSWORTH AND RICE COUNTIES, KS

Decided: August 29, 2001

On October 24, 2000, Union Pacific Railroad Company (UP) and Central Kansas Railway Limited Liability Company (CKR) jointly filed a petition seeking an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to permit UP to abandon, and CKR to discontinue service over, a 28.02-mile line of railroad: (1) between milepost 523.02, near Geneseo, and milepost 495.80, near Lindsborg (Hoisington Subdivision); and (2) between milepost 531.40 and milepost 530.60, near Lindsborg (McPherson Subdivision), in McPherson, Ellsworth, and Rice Counties, KS. By decision and notice of interim trail use or abandonment (NITU)² served February 9, 2001, the exemption was granted subject to trail use, public use, environmental, and standard employee protective conditions.

In the February 9 NITU, the Board authorized a 180-day period for the City of Lindsborg, KS (Lindsborg) to negotiate an interim trail use/rail banking agreement with UP for that portion of the right-of-way of the Hoisington Subdivision between milepost 495.8 and milepost 497.4, and for the entire right-of-way of the McPherson Subdivision. Also, a 180-day public use condition was imposed under 49 U.S.C. 10905. The condition required UP to keep intact all of the right-of-way between milepost 495.8 and milepost 497.4, and for the entire right-of-way of the McPherson Subdivision, including bridges, trestles, culverts, and tunnels (but not track and track materials) to permit public use negotiations.³

On February 13, 2001, the City of Marquette, KS (Marquette) filed a request for a NITU and for a 180-day public use condition. By decision and notice served March 7, 2001, the Board: (1) modified the February 9 NITU and authorized a 180-day period, until September 3, 2001, for

¹ This proceeding formerly embraced STB Docket No. AB-406 (Sub-No. 12X), Central Kansas Railway Limited Liability Company—Discontinuance of Service Exemption—In McPherson, Ellsworth and Rice Counties, KS. By letter filed April 10, 2001, CKR's representative notified the Board that the discontinuance of service exemption was consummated on April 5, 2001.

² See 16 U.S.C. 1247(d) and 49 CFR 1152.29.

³ The 180-day public use condition is scheduled to expire on September 7, 2001.

Marquette to negotiate an interim trail use/rail banking agreement with UP for a 2-mile segment of the right-of-way of the Hoisington Subdivision between milepost 504.5 and milepost 506.5; and (2) denied Marquette's request for imposition of an additional public use condition.

By letter filed on August 20, 2001, and amended on August 23, 2001, Marquette has requested an extension of its negotiating period, stating that negotiations with UP are currently under way and that the additional time is needed to finalize the terms of a negotiated agreement. Also, by letter filed on August 23, 2001, Lindsborg has requested an extension of its negotiating period, stating that negotiations are continuing and that the additional time is needed to allow UP to complete its review of the appraisal of the corridor. Both parties seek extensions of time for an additional 120 days. By a letter filed on August 27, 2001, UP has indicated that it is agreeable to the extension requests.

An extension of the trail use negotiating period may be granted as long as the Board retains jurisdiction over the involved right-of-way and the carrier is willing to continue negotiations. Inasmuch as UP has not consummated the abandonment and has indicated a willingness to continue to negotiate, the extension requests can be granted. See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); and SSW Ry. Co.—Aban.—In Smith and Cherokee Counties, TX, 9 I.C.C.2d 406 (1992).⁴ Accordingly, the NITU negotiating periods will be extended as set forth below.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The requests to extend the interim trail use negotiating periods are granted.
2. The negotiating period under the NITU for Lindsborg is extended for a period of 120 days from August 8, 2001, until December 6, 2001.

⁴ As to Lindsborg, the negotiating period under the NITU expired on August 8, 2001. Even if the negotiating period has expired, where a carrier seeks a continuation of the negotiations and has not abandoned the line at the end of the previously imposed period, the Board continues to have jurisdiction to grant an extension. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996).

3. The negotiating period under the NITU for Marquette is extended for a period of 120 days from September 3, 2001, until January 2, 2002.⁵

4. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary

⁵ The 120-day extension falls on January 1, 2002, a Federal Holiday. Thus, the next working day is January 2, 2002.